

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UTHERVERSE GAMING LLC,

Plaintiff,

v.

EPIC GAMES INC,

Defendants.

Case No. 2:21-cv-799-RSM-TLF

ORDER FOR SUPPLEMENTAL  
BRIEFING

The Court is aware that proposed amendments to the Federal Rules of Evidence were submitted to Congress by Chief Justice John G. Roberts, Jr., on April 24, 2023. If Congress does not act, these proposed amendments will take effect on December 1, 2023, and will govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending. Included in the rule amendments is Federal Rule of Evidence 702. [Pending Rules and Forms Amendments | United States Courts \(uscourts.gov\)](https://www.uscourts.gov/pending-rules-and-forms-amendments)

The text of amended Fed. R. Evid. 702 would be (new language is underlined, omitted language is lined through):

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

1 (a) the expert's scientific, technical, or other specialized knowledge will  
2 help the trier of fact to understand the evidence or to determine a fact in  
3 issue;

4 (b) the testimony is based on sufficient facts or data;

5 (c) the testimony is the product of reliable principles and methods; and

6 (d) ~~the expert has reliably applied~~ expert's opinion reflects a reliable  
7 application of the principles and methods to the fact of the case.

8 In this case, the dispositive motions, and motions to exclude expert  
9 witness evidence, are noted for November 10, 2023, but the Report and  
10 Recommendation of the Magistrate Judge, and the ruling by District Judge  
11 Ricardo Martinez, would not be entered until after December 1. Further, any  
12 potential trial would also be set for a time after December 1. Thus, if the  
13 amended Federal Rule of Evidence 702 goes into effect on December 1, it would  
14 be just and practicable to apply the amended rule to this matter.

15 The Court, therefore, directs the parties to submit supplemental briefing  
16 addressing whether the changes to Federal Rule of Evidence 702, as amended,  
17 would impact their summary judgment motions or the other motions relating to  
18 experts.

1 The parties are limited to 10 pages for this supplemental brief and are  
2 instructed to submit their respective briefs no later than **November 16, 2023**.

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4 Dated this 30th day of October, 2023.

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8 Theresa L. Fricke  
9 United States Magistrate Judge  
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